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HUSCH & EPPENBERGER, LLC 190 CARONDELET PLAZA SUITE 600 ST. LOUIS, MO 63105-3441			EXAMINER LEE, BENJAMIN WILLIAM	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No. **10/083,455**

Applicant(s)

RESOR, CHARLES P.

Examiner

Benjamin W. Lee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6,8-16 and 18-26 is/are pending in the application.
- 4a) Of the above claim(s) 22-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6,8-16 and 18-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. The amendment filed on 08/02/2007 has been entered. Claims 1, 3, 4, 6, 8-16 and 18-26 are pending in this application. Claims 1, 3, 8, 16, 18, and 19 have been amended. Claims 2, 5, 7, and 17 have been cancelled. Claims 22-26 are withdrawn from consideration. As a result, claims 1, 3, 4, 6, 8-16, and 18-21 have been considered in this Office Action.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Cameron et al. (U.S. Patent No. 5,632,624, hereinafter Cameron).

Re claim 8: Cameron discloses an electronic learning aid comprising a memory/ROM 60 for storing questions/question texts 64 for presentation to a user (see Figs. 2 and 3; col. 3, lines 1-23), a question engine/test mode for selecting and communicating to the user a plurality of questions from the questions stored in memory (see Fig. 7; col. 4, lines 54-62), an input device/buttons 18-24 for enabling the user to answer each question communicated to the user by the question engine (see col. 4, lines 59-61), a scorer for generating an evaluative score for a set

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of questions communicated by the question engine, the score being determined by how well the user answered the questions constituting the set by means of the input device (see col. 5, lines 24-27), a score-communication device/display 16 for communicating the evaluative score to the (see Fig. 1; col. 5, lines 24-27), a missed-questions memory for storing a plurality of questions that, during a plurality for sets of questions, were answered incorrectly or were not answered within a per-question time limit (see ref. no. S 250 in Fig. 7; col. 5, lines 27-29), and the electronic learning aid functioning without an external source of electricity and being a stand-alone unit (see col. 1, lines 55-61). Although Cameron is silent with respect to the electronic learning aid weighing less than one kilogram, it is inherent since the unit is designed to be handheld (see col. 6, line 16).

Re claim 10: The teachings of Cameron as applied to claim 8 above have been discussed. Cameron further discloses, in response to input, the question engine can, from the same group of questions stored in the missed-questions memory, develop and communicate to the user a plurality of scored sets of questions (see ref. no. S 250 in Fig. 7; col. 5, lines 27-29).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cameron.

The teachings of Cameron as applied to claim 8 and 10 above have been discussed.

However, the teachings of Cameron fail to disclose the missed-questions memory discontinues storing a question when necessary for storing therein a question more recently communicated by the question engine.

Official Notice was taken in the previous Office Action dated 04/04/2007 that both the concept and the advantages of only storing the most recent results for a set of chronologically ordered data are well known and expected in the art. The most recent results are most important in determining trends and current progress. A user is more likely to benefit from learning from recent mistakes rather than older mistakes which they may have already learned from or forgotten. Furthermore, it is well known in the art that portable and handheld devices may have limited amounts of memory and that older results will be deleted in favor of recent results. Since the applicant did not provide an argument against the examiner's use of Official Notice, the Official Noticed facts are now considered admitted prior art. See MPEP §2144.03.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the electronic study guide of Cameron as modified by Thomas such that the missed-question memory discontinues storing a question when necessary for storing a question more recently communicated by the question engine in order to reduce the cost of machine by using less memory.

7. Claims 1, 3, 4, 6, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cameron in view of Thomas (U.S. Patent No. 5,618,182).

Re claim 1: Cameron discloses an electronic learning aid comprising a memory/ROM 60 for storing questions/question texts 64 for presentation to a user (see Figs. 2 and 3; col. 3, lines 1-23), a question engine/test mode for selecting and communicating to the user a plurality of questions from the questions stored in memory (see Fig. 7; col. 4, lines 54-62), an input device/buttons 18-24 for enabling the user to answer each question communicated to the user by the question engine (see col. 4, lines 59-61), a scorer for generating an evaluative score for a set of questions communicated by the question engine, the score being determined by how well the user answered the questions constituting the set by means of the input device (see col. 5, lines 24-27), a score memory/RAM 46 for storing a score generated by the scorer and information relating to the score/total answered questions (see Fig. 2; col. 5, lines 24-27), a display 16 for displaying visually, in response to an input, the evaluative score stored in the score memory simultaneously with information relating to the score (see Fig. 1; col. 5, lines 24-27), and the electronic learning aid functioning without an external source of electricity and being a stand-

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alone unit (see col. 1, lines 55-61). Although Cameron is silent with respect to the electronic learning aid weighing less than one kilogram, it is inherent since the unit is designed to be handheld (see col. 6, line 16).

However, Cameron fails to disclose the score memory storing a predetermined *plurality* of evaluative scores.

Thomas teaches a computerized learning approach that monitors the performance of a user on a plurality of multiple choice exams. The percentage of correctness of a user is saved and is displayed to the user (see Fig. 5b; col. 7, lines 15-36).

Therefore, in view of Thomas, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add the performance monitoring of Thomas to the electronic learning aid of Cameron in order to allow the user to see how his/her performance is improving (see Thomas, col. 7, lines 37-38).

Thomas does not teach displaying evaluative scores and related information one score at a time. Thomas teaches displaying the evaluative scores in a table or graph. Applicant has not disclosed that displaying the scores one at a time solves any stated problem or is for any particular purpose. Moreover, it appears the electronic study guide of Cameron as modified by Thomas would perform equally well when displaying multiple evaluative scores at once.

Accordingly, it would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have further modified the teachings of Cameron as modified by Thomas such that the display displays evaluative scores and related information one score at a time because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the teachings of Cameron as modified by Thomas.

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Re claim 4: The teachings of Cameron as modified by Thomas as applied to claim 1 above have been discussed.

However, the teachings of Cameron as modified by Thomas fail to disclose the score memory discontinues storing an evaluative score for a set of questions when necessary for storing therein an evaluative score for a more recent set of questions.

Official Notice was taken in the previous Office Action dated 04/04/2007 that both the concept and the advantages of only storing the most recent results for a set of chronologically ordered data are well known and expected in the art. The most recent results are most important in determining trends and current progress. A user is more interested in recent results than older results since the user will be able to better predict future performance. Furthermore, it is well known in the art that portable and handheld devices may have limited amounts of memory and that older results will be deleted in favor of recent results. Since the applicant did not provide an argument against the examiner's use of Official Notice, the Official Noticed facts are now considered admitted prior art. See MPEP §2144.03.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the electronic study guide of Cameron as modified by Thomas such that the score memory discontinues storing an evaluative score for a set of questions when necessary for storing therein an evaluative score for a more recent set of questions in order to reduce the cost of machine by using less memory.



Re claims 3 and 6: The teachings of Cameron as modified by Thomas as applied to claims 2, 4, and 5 above have been discussed. Cameron further discloses an on/off switch 52 (see Fig. 2; col. 2, lines 55-56). Thomas teaches storing results in a non-volatile memory (i.e. diskette and tape), which by its very nature is not erased when the system is turned off (see col. 3, lines 62-66). It would have been obvious to one of ordinary skill in the art at the time the invention was made to store any data in non-volatile memory in order to retain stored information even when not powered.

Re claim 18: The teachings of Cameron as modified by Thomas as applied to claim 1 above have been discussed. Cameron further discloses a missed-questions memory for storing a predetermined plurality of questions that, during any of a plurality for sets of questions, were answered incorrectly or were not answered within a per-question time limit (see ref. no. S 250 in Fig. 7; col. 5, lines 27-29) and in conjunction with the missed-questions memory and in response to input, the question engine can, from the same group of questions stored in the missed-questions memory, develop and communicate to the user a plurality of scored sets of questions (see ref. no. S 250 in Fig. 7; col. 5, lines 27-29).

However, the teachings of Cameron as modified by Thomas fail to disclose the missed-questions memory discontinues storing a question when necessary for storing therein a question more recently communicated by the question engine.

Official Notice was taken in the previous Office Action dated 04/04/2007 that both the concept and the advantages of only storing the most recent results for a set of chronologically ordered data are well known and expected in the art. The most recent results are most important

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in determining trends and current progress. A user is more likely to benefit from learning from recent mistakes rather than older mistakes which they may have already learned from or forgotten. Furthermore, it is well known in the art that portable and handheld devices may have limited amounts of memory and that older results will be deleted in favor of recent results. Since the applicant did not provide an argument against the examiner's use of Official Notice, the Official Noticed facts are now considered admitted prior art. See MPEP §2144.03.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the electronic study guide of Cameron as modified by Thomas such that the missed-question memory discontinues storing a question when necessary for storing a question more recently communicated by the question engine in order to reduce the cost of machine by using less memory.

8. Claims 12-15 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cameron in view of Hardy et al. (U.S. Patent No. 5,203,705, hereinafter Hardy).

Re claims 12-15: The teachings of Cameron as applied to claims 8, 9, 10, and 11 above have been discussed.

However, Cameron fails to teach the missed-questions memory continues to store questions even when the learning aid is in a main-power-off state.

Hardy teaches a word spelling and definition educational device. The word spelling device allows a user to create a personal user list of words (see Fig. 2; col. 4, line 58 - col. 5, line 29). The device allows a user to play several spelling games. When a user plays a word

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incorrectly, the incorrectly played word is marked in the user's list. After the game is complete, a list of previously incorrectly played words is generated. The device checks for previous incorrect plays, implying that the device stores missed-questions when powered off (see Fig. 4; col. 7, lines 11-67).

Therefore, in view of Hardy, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add the feature storing questions in missed-question memory when the device is powered-off in order to allow a user to focus on his/her most recent mistakes immediately after the device is powered on.

Re claim 20: The teachings of Cameron in view of Hardy as applied to claim 15 above have been discussed. Hardy further discloses the question engine communicates questions to the user one question/word at a time (see col. 5, line 50 - col. 6, line 32) and a question probability selector operably associated with the question engine and arranged to allow a user to select one of a plurality of question-probability settings, such that when a setting is selected and the question engine is communicating questions, everything else begin equal: (a) each question has a predetermined probability of being the next question communicated, (b) the predetermined probability is equal to or greater than zero percent and less than or equal to one hundred percent, (c) the probability of a question with a predetermined probability greater than zero percent can differ from the probability of a different question greater than zero percent; and (d) the probability of a question with a percent probability greater than zero percent can differ from a greater-than-zero-percent probability of the same question when a different one of said settings is disclosed. Hardy teaches a word spelling and definition educational device. The word spelling

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device allows a user to create a personal user list of words (see Fig. 2; col. 4, line 58 - col. 5, line 29). The device allows a user to play several spelling games. When a user plays a word incorrectly, the incorrectly played word is marked in the user's list. After the game is complete, a list of previously incorrectly played words is generated (see Fig. 4; col. 7, lines 11-67).

Questions that are repeatedly missed by a user are more likely to be presented to the user more frequently (see col. 6, lines 45-49). Therefore, the user sets the probability of the question engine communicating questions when they get a question right or wrong. The device keeps a count for time word is played incorrectly (see ref. nos. 45-48 in Fig. 4). The probability of a question being selected is based on a weighted, quasi-random scheme (see Fig. 5; col. 7, line 66 - col. 8, line 50). A question with a non-zero probability may differ from another question with a non-zero probability since each word has an individual count. A question with a non-zero probability has various non-zero probabilities since its individual count/weighting may change. It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the user list and weighted, quasi-random question selection scheme of Hardy to the electronic study guide of Cameron in order to customize the device to the user's needs and weaknesses.

9. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hardy.

Hardy discloses an electronic learning aid comprising a question engine for selecting and communicating to a user a plurality of questions, one question/word at a time (see col. 5, line 50 - col. 6, line 32) and a question probability selector operably associated with the question engine and arranged to allow a user to select one of a plurality of question-probability settings, such that

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when a setting is selected and the question engine is communicating questions, everything else begin equal: (a) each question has a predetermined probability of being the next question communicated, (b) the predetermined probability is equal to or greater than zero percent and less than or equal to one hundred percent, (c) the probability of a question with a predetermined probability greater than zero percent can differ from the probability of a different question greater than zero percent; and (d) the probability of a question with a percent probability greater than zero percent can differ from a greater-than-zero-percent probability of the same question when a different one of said settings is disclosed. Hardy teaches a word spelling and definition educational device. The word spelling device allows a user to create a personal user list of words (see Fig. 2; col. 4, line 58 - col. 5, line 29). The device allows a user to play several spelling games. When a user plays a word incorrectly, the incorrectly played word is marked in the user's list. After the game is complete, a list of previously incorrectly played words is generated (see Fig. 4; col. 7, lines 11-67). Questions that are repeatedly missed by a user are more likely to be presented to the user more frequently (see col. 6, lines 45-49). Therefore, the user sets the probability of the question engine communicating questions when they get a question right or wrong. The device keeps a count for time word is played incorrectly (see ref. nos. 45-48 in Fig. 4). The probability of a question being selected is based on a weighted, quasi-random scheme (see Fig. 5; col. 7, line 66 - col. 8, line 50). A question with a non-zero probability may differ from another question with a non-zero probability since each word has an individual count. A question with a non-zero probability has various non-zero probabilities since its individual count/weighting may change.

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However, Hardy fails to explicitly teach the electronic learning aid weighing less than one kilogram, functioning without an external source of electricity, and being a stand-alone unit.

Official Notice was taken in the previous Office Action dated 04/04/2007 that both the concept and advantages of stand-alone portable devices that weigh less than one kilogram and function without an external source of electricity (i.e. use a battery) are well known and expected in the art. Furthermore, Hardy suggests that the invention is hand held and portable (see col. 1, lines 51-52). Since the applicant did not provide an argument against the examiner's use of Official Notice, the Official Noticed facts are now considered admitted prior art. See MPEP §2144.03.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the spelling aid of Hardy less than one kilogram, function without an external source of electricity, and stand alone in order to make the invention easier to transport.

10. Claims 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cameron as modified by Thomas as applied to claim 1 and 18 above, and further in view of Hardy

The teachings of Cameron as modified by Thomas as applied to claim 1 and 18 above have been discussed. Cameron further discloses the question engine communicates questions to the user one question at a time (see Fig. 7; col. 4, lines 54-62)

However, the teachings of Cameron as modified by Thomas fail to disclose a question probability selector operably associated with the question engine and arranged to allow a user to

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select one of a plurality of question-probability settings, such that when a setting is selected and the question engine is communicating questions, everything else begin equal: (a) each question has a predetermined probability of being the next question communicated, (b) the predetermined probability is equal to or greater than zero percent and less than or equal to one hundred percent, (c) the probability of a question with a predetermined probability greater than zero percent can differ from the probability of a different question greater than zero percent; and (d) the probability of a question with a percent probability greater than zero percent can differ from a greater-than-zero-percent probability of the same question when a different one of said settings is disclosed.

Hardy teaches a word spelling and definition educational device. The word spelling device allows a user to create a personal user list of words (see Fig. 2; col. 4, line 58 - col. 5, line 29). The device allows a user to play several spelling games. When a user plays a word incorrectly, the incorrectly played word is marked in the user's list. After the game is complete, a list of previously incorrectly played words is generated (see Fig. 4; col. 7, lines 11-67). Questions that are repeatedly missed by a user are more likely to be presented to the user more frequently (see col. 6, lines 45-49). Therefore, the user sets the probability of the question engine communicating questions when they get a question right or wrong. The device keeps a count for time word is played incorrectly (see ref. nos. 45-48 in Fig. 4). The probability of a question being selected is based on a weighted, quasi-random scheme (see Fig. 5; col. 7, line 66 - col. 8, line 50). A question with a non-zero probability may differ from another question with a non-zero probability since each word has an individual count. A question with a non-zero probability has various non-zero probabilities since its individual count/weighting may change.

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Therefore, in view of Hardy, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add the user list and weighted, quasi-random question selection scheme of Hardy to the electronic study guide of Cameron as modified by Thomas in order to customize the device to the user's needs and weaknesses.

### ***Response to Arguments***

11. Applicant's arguments filed 08/02/2007 have been fully considered but they are not persuasive.

### **Claims 8, 10, and 18**

The examiner respectfully disagrees with the applicant's argument that Cameron does not teach a missed-questions memory that stores "a plurality of questions that, during a plurality of sets of questions, were answered incorrectly or were not answered within a per-question time limit." In particular, the examiner notes that the claim does not specifically define what constitutes a "set of questions." A "set" is simply a collection of similar objects or in this case, questions. The scope of a "set of questions" has not been set forth by a claim. As a result, the size of a set of questions may be arbitrarily determined. For example, the device of Cameron may provide 10 questions in one play session/game/test. Those 10 questions may be considered 5 sets of 2 questions (a plurality of sets of questions). Thus, it is irrelevant that the device of Cameron lacks the ability to review problems missed in multiple "tests" because the claim does not limit a "set of questions" to one test or one play session. The applicant is reminded that although the claims are interpreted in light of the specification, limitations from the specification



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are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The examiner also respectfully disagrees with the applicant's argument that Cameron fails to disclose a question engine that "can, from the same group of questions stored in said missed-questions memory, develop and communicate to said user a plurality of scored sets of questions" (as per claim 10) and Cameron fails to teach the ability to develop and communicate a plurality of scored sets of questions from a missed-questions memory for reasons similar to claim 8 (the bounds of a "set of questions" have not been defined by the claims).

Claim 1 (incorporating cancelled claims 2 and 5)

The examiner respectfully disagrees with the applicant's arguments regarding claim 1. The relevant limitation in claim 1 is "a display for displaying visually, in response to an input, each evaluative score stored in said score memory simultaneously with information relating to said score, wherein said display displays said evaluative scores and related information one score at a time." Cameron teaches displaying a single score and the number of answered questions (i.e. related information) (see col. 5, lines 24-27). Thomas teaches displaying scores in table or graph (see Fig. 5). In response to the examiner's consideration of displaying a score and related information one at a time, the applicant argues that the Applicant's specification states that displaying scores one at a time allows for "extensive important information" to be displayed with the score. The examiner notes that claim only states "related information" and is silent with respect to the content or quantity of the "related information." The examiner considers the number of answered questions from Cameron to be related information. The examiner's

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previous rejection of claims 2 and 5 (now incorporated into claim 1) using a design consideration was not with respect to the invention as disclosed in the specification, but rather the invention disclosed in the claims.

#### Claims 3 and 6

The examiner respectfully disagrees with the applicant's arguments regarding claims 3 and 6. The applicant argues that "Larger devices such as the computer contemplated by Thomas '182 use memory storage mediums that require more space, and would generally be impractical for use in a handheld device, such as the claimed learning device. Providing non-volatile memory capable of functioning in such a handheld device would increase cost and complexity of such a device." The examiner notes that making a device portable is not sufficient by itself to patentably distinguish over an otherwise old device unless there are new or unexpected results. See MPEP §2144.04(V)(A). Furthermore, non-volatile memory and using non-volatile memory in handheld devices is old and well known in the art. For example, personal digital assistants (PDAs) existed at the time of invention and featured non-volatile memory (PDAs are generally turned off to maintain battery life). Many desktop applications have been ported to PDAs with similar functionality (e.g. web browsers, e-mail clients, office applications, etc.). It is reasonable to expect that programs on larger computing platforms can be reasonable ported to handheld computers.

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Claims 12-15 and 20

The examiner respectfully disagrees with the applicant's argument that Hardy does not disclose storing or generating a list of incorrectly played words after the game is played. One of the deficiencies of the prior art handhelds identified by Hardy is that previous spelling correctors vary words from time to time (see col. 1, lines 54-57). Furthermore, various flow charts of Hardy describe checking up to the previous five plays of an individual (see Fig. 4). A "play" in Hardy is considered one traversal of a subset of words in the word list (user or randomly generated). Thus, it is clearly implied that device of Hardy must save this information in a powered-off state or else it would not be able to determine whether the previous five plays were all correct. Regarding the Hangman game of Hardy, the examiner notes there are several different submodes disclosed in Hardy and the examiner did not use the Hangman submode in the rejections.

Claims 16 and 19-21

The examiner respectfully disagrees with the applicant's argument does not disclose the claimed "question-probability selector" because a *selector* that allows a user to select a setting is distinct from the automated and involuntary function disclosed in Hardy. The claims require "a question-probability selector operably associated with said question engine and arranged to allow a user to select one of a plurality of question-probability settings." The examiner notes that the claims are silent with respect to the manner in which the user selects the probability. The claims merely require a user to be able to select a setting. The user selects a probability setting by answering questions; questions answered incorrectly are weighted to appear more often. The

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setting of the probability of a word being presented is determined by the user. Furthermore, the examiner is unclear with regards to the applicant's statement that "the device disclosed in Hardy '705 does not teach the selection of a setting" (page 20, 2<sup>nd</sup> paragraph). In the computer arts, a setting is merely a variable option used by a computer program (e.g. on/off, a number 1-10, yes/no, etc.). The user of the invention of Hardy changes the setting frequency of the occurrence of individual words based on their performance.

Claim 18*Conclusion*

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin W. Lee whose telephone number is 571-270-1346.

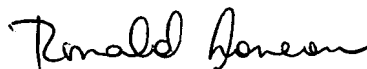
The examiner can normally be reached on Mon - Fri (8:30 - 5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on 571-272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BWL

Benjamin W. Lee  
October 15, 2007



Ronald Laneau  
Primary Examiner  
Art Unity 3714

10/15/07